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NO. 82-210

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE CITY OF FORT WORTH, TEXAS, PETITIONER

V.

WALTER E. GARRIS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether an arrest pursuant to a facially valid warrant absent fraud constitutes a constitutional deprivation?

2. Whether a determination made by an impartial magistrate in electing to issue an arrest warrant based upon an affidavit constitutes probable cause within the meaning of the Fourth Amendment so as to preclude a subsequent jury determination of no probable cause for arrest in a civil rights action for damages pursuant to 42 U.S.C. § 1983?

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The City Attorney of Fort Worth, Texas, on behalf of the City of Fort Worth, Texas, petitioner for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, infra 1a-43a) is reported at 678 F.2d 1264 (1982). The District Court wrote no opinion and is therefore not reported.

JURISDICTION

The judgment of the District Court (App. D, infra 48a-51a) was entered on the 25th day of March, 1981. The judgment of the Court of Appeals (App. B, infra 44a-45a) was entered on June 24, 1982. On July 15, 1982, the Court of Appeals ordered a stay of the issuance of the mandate to August 8, 1982, if during that period of time there is filed with the Court of Appeals a notice from the Clerk of the Supreme Court that a petition for a writ of certiorari, the stay shall continue until final disposition by the Supreme Court (App. C, infra 46a-47a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourth Amendment to the United States Constitution provides in relevant part:

> The right of the prople to be secure ... and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing ... the persons to be seized.

2. 42 U.S.C. § 1983, Civil action for Deprivation of Rights provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisidction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT

Plaintiff brought suit in the United States District Court under 42 U.S.C. § 1983 seeking damages against Officer G. F. Rowland, a Fort Worth Police Officer, Chief of Police A. J. Brown, and the City of Fort Worth for Constitutional deprivations for false arrest. During the trial plaintiff dismissed all defendants except Officer Rowland and the City. In 1980 the case was tried to a jury. The jury found damages of $25,000, no probable cause for the arrest, the officer had a reasonable good faith belief that his actions were lawful and the officer followed the usual custom, policy and procedure in effectuating the arrest. The District Court gave judgment for damages of $25,000, jointly and severally, against both the police officer and the City. The Court granted expunction of the arrest record. Both defendants appealed to the United States Court of Appeals for the Fifth Circuit. The Appeals Court affirmed the lower

court's order of expunction of the arrest records, affirmed judgment against the City for the arrest without probable cause, held harmless error for the trial judge to allow the plaintiff to go behind the arrest warrant absent pleading and proof of fraud or wilful misrepresentation on the part of the police officer who drew the affidavit leading to the arrest warrant, and reversed the judgment against the police officer based upon his qualified immunity of a reasonable good faith belief that his actions were lawful.

REASONS FOR GRANTING THE PETITION

1. This case sets a precedent of devastating proportions against police officers and local governments. This case holds for the proposition that now an individual may sue a police officer and local government for damages under 42 U.S.C. §1983, for false arrest without probable cause even though the arrest was made pursuant to a facially valid arrest warrant absent allegations of deliberate falsehood or reckless disregard for the truth and on offer of proof as required by Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 157 L.Ed.2d 667 (1978):

> There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant. To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or reckless disregard for the truth, and those allegations must be accompanied by an offer of proof.

Franks, at 171.

If a person may sue for damages in a §1983 action and go behind the arrest warrant to have a jury determine probable cause for the arrest as if the magistrate's determination of probable cause at the time of issuing the arrest warrant had no meaning, then everyone not convicted of a misdemeanor or indicted of a felony would have a cause of action against the police officers and the local government in accordance with Monell v. New York City Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) and Owen v. City of Independence, Missouri, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980). Such an onerous burden of potentially litigating every magistrate's determination to a jury for 42 U.S.C. §1983 and resulting 42 U.S.C. §1988 awards would bring effective law enforcement to a halt. (See the affidavit executed in good faith by an investigating police officer, App. A, 7a-9a infra.)

2. Turning to the issue of Rodriquez v. Ritchey, 556 F.2d 1185 (5th Cir., 1977), cert. den., 434 U.S. 1047, 98 S.Ct. 894, 54 L.Ed.2d 799, should be considered.

Rodriquez:

> First, and most basically, an arrest made under authority of a properly issued warrant is simply not a 'false' arrest, it is a 'true' or valid one. Second, if the facts supporting an arrest are put before an intermediate such as a magistrate or grand jury, the intermediate's decision breaks the causal chain and insulates the initiating party. (emphasis added)

Rodriquez, at p. 1193. The Court rules:

> ...(W)hen one alleges an arrest without unreasonable force under a valid warrant issued pursuant to a properly constituted grand jury indictment, no cause of action is stated under the Fourth Amendment.

Rodriquez, at p. 1194.

The Courts below have failed to follow Baker v. McCollan, 443 U.S. 137, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979). In Baker the Plaintiff was arrested and incarcerated pursuant to a warrant because of a mistaken identification. In Baker the Court stated:

> Respondent's innocence of the charge contained in the warrant,...is largely irrelevant to his claim of deprivation of liberty without due process of law. The Constitution does not guarantee that only the guilty will be arrested. If it did, §1983 would provide a cause of action for every defendant acquitted--indeed, for every suspect released. Nor are the manifold procedural protections afforded criminal defendants under the bill of Rights 'without limits.' Patterson v. New York, 432 U.S. 197, 208, 53 L.Ed.2d 281, 97 S.Ct. 2319 (1977). 'Due process does not require that every conceivable step be taken, at whatever costs, to eliminate the possibility of convicting an innocent person.' Ibid.
>
> The Fourteenth Amendment does not protect against all deprivations of liberty. It protects only against deprivations of liberty accomplished 'without due process of law.' A reasonable division of functions between law enforcement officer, committing magistrates, and judicial officers - all of whom may be potential defendants in a §1983 action - is entirely consistent with 'due process of law.'

Baker, at page 145.

There simply was no Fourth Amendment violation by the police officer or the City of Fort Worth. The custom and policy the police officer followed was to follow the law.

CONCLUSION

The erroneous determination by the Appeals Court as to the law and the horrendous effect it will have on police officers and local governments indicates the writ of certiorari should be granted.

Respectfully submitted,

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